

### REMARKS

Claims 1-30 are pending. Applicants elect with traverse Group I (claims 1-20) for examination on the merits. With regard to the requirement for an election of species, (i) the water-soluble polymer is ethyl cellulose, (ii) the enteric polymer is a methacrylic acid-methyl methacrylate copolymer (Eudragit L, Eudragit S), (iii) the hydrophobic wax is magnesium stearate, and the (iv) the benzimidazole-based compound is rabeprazole. Claims 1-20 read on at least one of the elected species. Applicants reserve the right to prosecute nonelected subject matter in a further patent application.

Notwithstanding the above election, reconsideration of the restriction requirement is requested because examination of all pending claims would not constitute a serious burden. Although the inventions identified by the Examiner are separately patentable, both the need for compact prosecution and the public interest would be served by examination of all claims in a single application. In particular, the claims of Groups I and II should be examined in the same application. Thus, claims 21-24 should not be withdrawn from consideration because they are directed to capsule preparations and their associated packaging (see Group II) containing controlled-release pharmaceutical compositions (see Group I). The claims are related as subcombination-combination.

In the alternative, Applicants disagree with the allegation in the Action that the pending claims lack unity of invention, and therefore belong to different groups of inventions. Although they agree with the Examiner's conclusion that the inventions are separately patentable, Applicants' traversal is based on the pending claims being so linked as to form a single general inventive concept under PCT Rule 13.1. Therefore, Applicants submit that the pending claims should be examined together in this application. Claims 1-24 are directed to products, claims 25-29 are directed to methods for the production of some products, and claim 30 is directed to methods for their use.

Further, in accordance with the Commissioner's Notice of March 26, 1996 (1184 OG 86) implementing the Federal Circuit's decisions of *In re Ochiai*, 37 USPQ2d 1127 (1995) and *In re Brouwer*, 37 USPQ2d 1663 (1996), Applicants request rejoinder of nonelected method claims upon an indication that an elected product claim is allowable.

Applicants earnestly solicit an early and favorable examination on the merits. The Examiner is invited to contact the undersigned if additional information is required.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:                     /Gary R. Tanigawa/

Gary R. Tanigawa

Reg. No. 43,180

901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100